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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5108 OF 2005

Vishwas Banda Kamble ... Petitioner

Versus

Shri. Rajarshi Shahu Chatrapati
Shikshan Prasarak Mandal and Ors... Respondents

Mr. Mihir Desai for Petitioner.

Mr. S.S. Aradhye with Mr. P.D. Dalvi for R. No. 1 and 2.

Mrs. M.P. Thakur, A.G.P. for R. Nos. 3 and 7.

CORAM: F.I. REBELLO &
S.J. VAZIFDAR,JJ.
DATED: FEBRUARY 09, 2007

P.C.:

. The learned A.G.P. waives notice on behalf of Respondent Nos. 3 and 7. For the order to be passed, notice on Respondent Nos. 1 and 2 dispensed with.

. The case of the Petitioner is that having been appointed as Shikshan Sevak for 3 years his services could not have been terminated. It is submitted that to the post which he was appointed, some other teacher has been posted by transfer during the pendency of the appeal. This would show the existence of the post and consequently the contention urged on behalf of the Respondents that there was no post for which approval could be

granted is clearly erroneous and to that extent the order of the grievance committee discloses error of law apparent on the face of the record.

. We have heard the learned counsel as also the contentions urged. From the record it is the consistent stand of the Respondent State that there was no sanctioned post considering the number of students in the school. The contention by the petitioner that some other teacher was transferred to the school where he was working and to the post he was occupying is made for the first time in the affidavit filed in the year 2004. The Petitioner was appointed on 13.7.2001 and his services came to be terminated on 13.6.2002. There is nothing on record to indicate as to whether in fact there was increase in number of students and corresponding increase in number of posts. Even otherwise, this aspect appears not to have been urged before the grievance committee. In the petition filed before us, there is no contention that the point was urged and not answered. Considering the above, we are not inclined to consider that contention.

. The learned counsel then points out that the respondent Management at least must comply with the order of 7.5.2002. It is submitted that there is no provision for execution. In order to grant a writ

of manmdamus or any directions, the Petitioner must establish existence of legal right. At the highest, the action of the Management would amount to breach of the contract. Considering that in our opinion the order of the Tribunal granting salary for the period of 3 years upto 30.04.2004 out of their own fund was clearly without jurisdiction considering that his services were terminated on 13.6.2002. For the period the Petitioner has worked he is bound to be paid on the principle that once the work is taken from a person, the employer is bound to pay for the period for which the service was rendered and on the same basis as other employees are paid.

. In the light of that the respondent is directed to comply with the order of the grievance committee to the extent that if there be any unpaid salary of Shikshan Sevek from 13.7.2001 to 13.6.2002, that be paid at any rate not latter than eight weeks from the copy of this order being served on them. With the above observations, we find this not to be a fit case for us to exercise our extra ordinary jurisdiction. Petition dismissed. No order as to costs.

(S.J. VAZIFDAR,J.) **(F.I.REBELLO,J.)**